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Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 167.

THE MIDDLETOWN NATIONAL BANK

against

TOLEDO, ANN ARBOR AND NORTH MICHIGAN RAILWAY COMPANY AND OTHERS.

ON QUESTIONS CERTIFIED TO THIS COURT BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR DEFENDANTS AMOS F. ENO, ALFRED DE CORDOVA, JACQUES S. HALLE AND ALBERT STIEGLITZ, PARTNERS, ETC., H. LIVINGSTON ROGERS, ALFRED H. VERNAM, EDWARD N. BOND AND CHARLES C. CROOK, PARTNERS, ETC., AND BYAM K. STEVENS.

LUCIUS H. BEERS,
Counsel for Defendants Amos F. Eno and others.

EVENING POST JOB PRINTING OFFICE, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1904.

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THE MIDDLETOWN NATIONAL BANK

AGAINST

TOLEDO, ANN ARBOR AND NORTH MICHIGAN RAILWAY COMPANY and others.

ON QUESTIONS CERTIFIED TO THIS COURT BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR DEFENDANTS AMOS F. ENO AND OTHERS.

Statement.

The certificate of the Circuit Court of Appeals for the Second Circuit sets forth that an appeal had been taken to that Court from a decree of the United States Circuit Court for the Southern District of New York, sustaining demurrers to the bill of complaint and dismissing the bill (fol. 1),

that the complainant, a creditor of the defendant railway company, which is a corporation of Ohio, having recovered a judgment in the Supreme Court of the State of New York, and an execution issued thereon having been returned unsatisfied, brought this bill in equity for the benefit of itself and other creditors against numerous stockholders of said company resident in the district, to enforce the liability of such defendants for debts of the company under the laws of Ohio (fol. 1).

The certificate further sets forth Section 3 of Article XIII. of the Ohio Constitution of 1851, together with Sections 3258 of the Revised Statutes of Ohio of 1880, Section 3260 of said Revised Statutes as amended in 1894, and as further amended in 1900 (fols. 2-4).

After quoting the opinion of the Circuit Court sustaining the demurrer, the Circuit Court of Appeals certifies to this Court the following questions:

> "FIRST.—Whether article XIII., section 3 of the constitution of Ohio is so far self executing that it may be enforced outside of the jurisdiction of said State without compliance of said requirements of section 3260 of the Revised Statutes of said State as amended in 1894.
>
> "SECOND.—Whether article XIII., section 3 of the constitution of Ohio is so far self executing that it may be enforced outside of the jurisdiction of said State without compliance with said requirements of section 3260 of the Revised Statutes of said State as amended in 1900."

POINT I.

Section 3 of Article XIII. of the Ohio Constiution is not in terms self-executing.

This will appear (1) by an examination of the entire Article XIII. of the Ohio Constitution; (2) by the phraseology of Section 3; (3) by the intention expressed in the Ohio Constitutional Convention when this section was under discussion; (4) by the legislative construction which this section has received in Ohio; (5) by the language by which this section has been characterized in the Ohio courts, and (6) by the construction which has been placed in the courts of other States upon constitutional provisions which have corresponded with the section now under consideration.

FIRST.—STRUCTURE OF ARTICLE XIII. OF THE OHIO CONSTITUTION IN ITS ENTIRETY.

An examination of Article XIII., a copy of which appears in the appendix hereto (pp. 15–16), will show that it is a mandate to, and check upon, the General Assembly of Ohio, but does not itself legislate upon the subjects of which it treats. The whole subject of the creation and regulation of corporations is treated briefly in seven sections. These seven sections are all relatively short, and in them most important subjects are treated by brief mandates to, or checks upon, the General Assembly.

This is in harmony with the function of a constitution as distinguished from that of the statute, that is, the constitution declares the principles, leaving the statute to provide for the enforcement of such principles.

Section 1 is a check upon the General Assembly,

prohibiting it from conferring corporate powers by special act.

Section 2 permits the General Assembly to form corporations under general laws and permits the alteration and repeal of such laws. This imposes on the General Assembly the entire responsibility for the formation of corporations.

Section 3 is the section here under consideration.

Section 4 requires that the property of corporations shall be subject to taxation "the same as the property of individuals." This does not attempt to specify what the taxes shall be, but leaves it to the General Assembly to impose those taxes with the limitation on its powers that taxes on corporations and on individuals shall be the same.

Section 5 relates to rights of way and provides for compensation to be ascertained by a jury in a court "as shall be prescribed by law."

Section 6 requires the General Assembly to provide for the organization of cities and villages and requires it to restrict the power of such political corporations to tax, to borrow money, to contract debts, or to loan their credit. It will be observed that in this section limitations on the powers of cities, which are frequently directly incorporated in constitutions, are here required to be the subject of legislation by the General Assembly.

Section 7 provides that acts of the General Assembly authorizing banking corporations, must be submitted to the people for ratification at a general election.

Reading Article XIII. as a whole, it therefore appears that its whole plan is to require the General Assembly to provide for the incorporation and regulation of corporations, and with certain limitations prescribing what the statutes must provide or beyond which the statute may not go.

SECOND.—THE PHRASEOLOGY OF SECTION 3 OF ARTICLE XIII.

This section provides that dues from corporations shall be secured by *such* individual liability of the stockholders as may be prescribed by law. The importance of the word "such," occuring as it does, will hereafter appear in connection with the strenuous debates which took place at the Constitutional Convention. The whole structure of the provision depends upon the use of the word "such," followed by the words "as may be prescribed by law."

Obviously, the intention of this language was to require the General Assembly to prescribe by law what the individual liability of the stockholders should be. And this Section 3, like other sections in Article XIII., then proceeds to limit the power of the General Assembly to curtail the individual liability of stockholders by providing that in all cases each stockholder should be liable, over and above his stock, to a further sum at least equal to the amount of such stock. As so construed, the language of Section 3 is consistent and intelligible, and is in harmony with the other sections of Article XIII.

It cannot be said that Section 3 *creates* a liability, and merely imposes on the General Assembly the obligation to provide a remedy.

It is not a remedy which is to "be prescribed by law," but a "*liability*." The first clause of Section 3 requires the General Assembly to "*prescribe*" an "individual *liability*." Obviously, the greater includes the less, and the Constitution having required the General Assembly to prescribe a liability, must have intended that the General Assembly should also determine what the extent of that liability should be, but, to prevent them from creating an insufficient liability, proceeds to require that the liability so to be prescribed shall be for not less than an amount equal to the stock held by each stockholder.

Section 2 of Article XIII., which immediately

precedes the section now under consideration, permits corporations to be formed under general laws, which may from time to time be altered or repealed. This shows an intention to impose on the General Assembly the entire responsibility for incorporating companies. It is entirely in line with this intention for the Constitution to proceed in Section 3 to require the General Assembly to prescribe what the individual liability of stockholders shall be. To claim that the latter part of Section 3 *creates* and fixes a liability without reference to legislative action is to impute to the Constitution an inconsistency which its language does not warrant, and which, as the proceedings of the Constitutional Convention show, was contrary to the intention of its framers.

In 1856 the highest court of Ohio, in construing Section 3 of Article XIII., read it in connection with Section 2, and construed it as follows:

> "The second section is a grant of powers to the General Assembly; the power, first, to authorize the formation of corporations under general laws; and, second, to alter or repeal those laws. What General Assembly is referred to in this and in the seventh section? Obviously to the General Assembly which should be called into being by and under the new Constitution. All preceding General Assemblies existed under and in virtue of the preceding Constitution. The new Constitution could confer no authority on them, for the last of them would expire at the moment of the birth of the new Constitution. Following immediately on this grant of powers, contained in the second section, to the General Assembly which was to come into being in the future, and under and by virtue of the provisions of the new Constitution, and in immediate juxtaposition with it, comes the third section, limiting the powers granted in the preceding section and mandatory on the General Assembly as to the mode of their exercise. This, we think, is the sole office of this section, and, like the grant of powers which it was designed to limit and

regulate, it is prospective only, in its intent and application."

Citizens' Bank of Steubenville v. *Wright, Auditor*, 6 Ohio State, 318, 328.

THIRD. —THE INTENTION EXPRESSED IN THE CONSTITUTIONAL CONVENTION.

The question, whether Section 3 ought to be self-executing or not, was discussed at great length in the Ohio Constitutional Convention, and it was there decided that the creation of stockholders' liabilty should be left to the General Assembly to be prescribed by statute.

The record of that Convention (Ohio Convention Debates, 1850–1851, Vol. 1, pp. 369 to 427) shows that on June 10, 1851, the Committee on Corporations other than Banking Corporations, offered to the Convention Section 3 of this Article.

As soon as this section was reported a motion was made to strike out the word "such" in the first line, and to insert instead the word "the" (Debates, p. 369).

This amendment was immediately opposed on the ground that "the effect would be to change the lia- "bility into a positive one, instead of a liability to "be determined by law. The change would be a "very serious one" (Debates, p. 369).

On this amendment there was a most strenuous debate in the Convention, lasting for three days. An examination of the arguments presented in this debate will show that the question of the advisibility on the one hand, of providing a fixed constitutional liability, or, on the other hand, of providing for a statutory libility, which might from time to time be dealt with by the General Assembly, was discussed in all its bearings and at great length.

The result of it all was a vote of 36 in favor of the amendment and 38 against it (p. 429). Thus the policy of the State of Ohio was declared to be

against a self-executing constitutional liability, and the constitutional provision thus decided upon remains in force to this day.

The highest Court of Ohio has sanctioned and followed the practice of referring to the debates of the Constitutional Convention as throwing light on the meaning of words used by the framers of the Ohio Constitution.

State v. *Kennon*, 7 Ohio St., 546, 563.

FOURTH.—CONSTRUCTION OF SECTION 3 OF ARTICLE XIII. BY THE GENERAL ASSEMBLY OF OHIO.

At the first session of the General Assembly of Ohio, after the adoption of the Constitution of 1851, a general act was passed to provide for the creation and regulation of incorporated companies in that State. That act at Sections 78 and 79 (Appendix, p. 16), in conformity with the mandate contained in Section 3 of Article XIII. of the Constitution, made the stockholders of corporations liable to an amount equal to their stock and in addition to the stock. Commencing with that session of the General Assembly there have at all times down to this day been Statutes in Ohio imposing and maintaining this liability of stockholders.

Various changes have been made as to methods of enforcing the liability, but the Legislature has considered it necessary at all times to maintain a Statute imposing a liability (Appendix, pp. 16–19), and has never treated Section 3 of Article XIII. of the Constitution as self-executing.

> "In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect."
>
> *Edwards' Lessee* v. *Darby*, 12 Wheat., 206, 210.

The action of the Ohio General Assembly is in marked contrast with legislative action in Kansas, based upon the Constitution of the latter State. In Kansas a direct absolute liability was created by the Constitution, and the Legislature of that State has not attempted to create any statutory liability, but has, at all times, confined itself to the adoption of acts providing for the enforcement of the constitutional liability.

FIFTH.—EXPRESSIONS USED BY THE COURTS OF OHIO IN CHARACTERIZING STOCKHOLDERS' LIABILITY IN THAT STATE.

In considering the subject of stockholders' liability as created by the statutes of Ohio, above referred to, the highest courts of that State have uniformly referred to such liability as being *statutory*, and have not referred to it as being created by the Constitution.

Examples are:

Citizens Bank of Steubenville v. *Wright, Auditor*, 7 Ohio St., 318.
State v. *Sherman*, 22 Ohio St., 411.
Ryder v. *Fritchey*, 49 Ohio St., 285.
Brown v. *Hitchcock*, 36 Ohio St., 676.

SIXTH.—CONSTRUCTION PLACED BY STATE COURTS ON CONSTITUTIONAL PROVISIONS RELATING TO THE LIABILITY OF STOCKHOLDERS.

The phraseology adopted by the Ohio constitutional convention in preparing Section 3 of Article XIII., appears in whole or in part in the constitutions of a number of the other States.

As will appear at pages 19-24 of the appendix to this brief, these constitutional provisions of various States may be divided, so far as the question now under consideration is concerned, into four groups:

GROUP I.—Those which direct that there shall be such a liability of stockholders as may be prescribed by statute, without further direction to the Legislature on the subject. Instances of this are the Constitutions of New York, 1846; Illinois, 1848; Indiana, 1851; North Carolina, 1868; South Carolina, 1868.

GROUP II.—Those which provide, like the Constitution of Ohio, that there shall be such liability of stockholders as may be prescribed by statute, and then proceed to establish a minimum of liability, below which the Legislature cannot go. Instances of this are the Constitutions of California, 1849; Missouri, 1865; Alabama, 1867–8.

GROUP III.—Those which provide such liability as may be prescribed by statute, with a maximum of liability, beyond which the Legislature cannot go. Instances of this are the Constitutions of Nevada, 1864; West Virginia, 1872; Missouri, 1875; Alabama, 1875; Idaho, 1890.

GROUP IV.—Constitutions in which the liability is not required to be prescribed by the State Legislature. Examples of this class are the following Constitutions: Michigan, 1850 (as to labor performed); Minnesota, 1857; Kansas, 1859; Nebraska, 1875; California, 1879.

By reason of the differing phraseology of the constitutional provisions above referred to it will be seen that cases like *Whitman* v. *Bank*, 176 U. S., 559, which was under the Kansas Constitution, or *Willis* v. *Mabon*, 48 Minn., 140, or any other cases arising under those constitutions enumerated in the fourth group (Michigan, 1850; Minnesota, 1857; Kansas, 1859; and California, 1879) are not in point here and throw no light on this case.

It is significant to observe in connection with the last class that the Kansas Constitution of 1858 prac-

tically followed the Ohio Constitution in this provision, but that afterward the Constitution was materially changed and in 1859 created an absolute and direct liability.

As above indicated in the case of the second class of constitutional provisions on this subject (Constitutions of California, 1849; Missouri, 1865, and Alabama, 1868), the language is similar to that employed in the Ohio Constitution. All three of these constitutions have been so construed by the highest courts of the State as to involve the decision that the constitutional provision was not self-executing.

French v. *Teschemaker*, 24 Cal., 518.
Jerman v. *Benton*, 79 Mo., 148.
Central Agricultural Association v. *Alabama Insurance Co.*, 70 Ala., 120.

POINT II.

The construction which has been placed on this clause of the Ohio Constitution by the highest courts of Ohio is controlling in this court.

Luther v. *Borden*, 7 How., 1, 40.
Post v. *Supervisors*, 105 U. S., 667.
Butcher v. *Cheshire R. R. Co.*, 125 U. S., 555, 581-584.

The principle declared in *Burgess* v. *Seligman*, 107 U. S., 20, 133, and *Great Southern Hotel Co.* v. Jones, 193 U. S., 532, is not applicable here.

In those cases it was held that this court was not bound by the interpretations which a State court had put on the Constitution or statutes of a State where the right of action had arisen *prior* to such decision of the State courts.

Unless it affirmatively appears, as it does not in this case, that a cause of action has arisen under the terms of a State constitution or statute before the courts of that State have placed their construction upon it, that construction is conclusive in this Court. And even in cases where the construction in the State court has been adopted after rights have accrued, this Court has said that for the sake of harmony and to avoid confusion it will lean towards an agreement of views with the State courts, if the question seems to this Court balanced with doubt.

Burgess v. *Seligman*, 107 U. S., 20, 34.

POINT III.

The highest court of Ohio has held that Section 3 of Article XIII. of the Ohio Constitution is not self-executing.

State of Ohio ex rel. Attorney-General v. *Sherman* (1872), 22 Ohio State, 411.

Ryder v. *Fritchey, Admn.* (1892), 49 Ohio State, 285.

Citizens' Bank of Steubensville v. *Wright* (1856), Auditor, 6 Ohio State, 318.

In the first of the above cases it was held that the Pittsburg, Fort Wayne and Chicago Railway Co. had, in effect, accepted a new charter under an Ohio statute passed in 1863, but, as that act did not provide for the individual liability of the stockholders, as required by the Ohio Constitution, it was void, and the defendants were accordingly ousted as to the franchise of that company on proceedings brought by the Attorney-General on *quo warranto*.

In the second of the above cases it was held that

an averment that a street railway company was duly incorporated was a sufficient averment that its incorporation was under an act which provided for the liability of stockholders, as otherwise such act would have been unconstitutional.

It will be observed that in deciding both of these cases the Ohio courts have necessarily held that Sec. 3 of Art. XIII. of the Ohio Constitution is not self-executing. If it were, there would have been no necessity for legislation to create stockholders' liability and a statute could not have been held unconstitutional because in providing for the incorporation of companies it failed to create such liability.

In the still earlier case of *Citizens' Bank of Steubensville* v. *Wright, Auditor*, 6 Ohio State, 318, a banking corporation had been organized subsequent to the adoption of the Ohio Constitution of 1851 but under a statute of the same year which had been passed before the adoption of that Constitution. That statute made the stockholders of the bank liable only on its circulating notes and not generally to its creditors, and when in 1856 the bank applied to the State Auditor for the issue of circulating notes, he declined to issue them on the ground that the act under which the bank was incorporated had been abrogated by the Constitution of 1851. A *mandamus* proceeding was brought to compel the Auditor to deliver the notes. The application was sustained, and the prevailing opinion of the Supreme Court of Ohio held that Art. XIII. of the Constitution was a mandate to the General Assembly as to future legislation and did not affect previous statutes.

In a dissenting opinion the Chief Justice argued that while Article XIII. was a mandate to the General Assembly, it also operated to abrogate previous statutes relating to incorporation which did not impose individual liability on the stockholders, and that after the adoption of the Constitution of 1851, no corporatiohs could be formed except under a gen-

eral law which prescribed that the stockholders should be individually liable for the debts of the corporation.

It will be observed that both the prevailing and dissenting opinions are based on the conclusion that Section 3 is not self executing.

POINT IV.

Both questions certified to this Court should be answered in the negative.

LUCIUS H. BEERS,
Of counsel for defendants Amos F. Eno and others.

APPENDIX.

Constitution of the State of Ohio, adopted 1851.

ARTICLE XIII.

CORPORATIONS.

SECTION 1. The General Assembly shall pass no special act conferring corporate powers.

SEC. 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered, or repealed.

SEC. 3. Dues from corporations shall be secured, by such individual liability of the stockholders, and other means, as may be prescribed by law; but, in all cases, each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least equal in amount to such stock.

SEC. 4. The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

SEC. 5. No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation; which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

SEC. 6. The General Assembly shall provide for the organization of cities, and incorporated villages, by general laws; and restrict their power of taxation, assessment, borrowing money, contracting

debts and loaning their credit, so as to prevent the abuse of such power.

SEC. 7. No act of the General Assembly, authorizing associations with banking powers, shall take effect, until it shall be submitted to the people, at the general election next succeeding the passage thereof, and be approved by a majority of all the electors, voting at such election. (Laws of 1852, p. 27).

Statutes of Ohio.

ACT OF MAY 1, 1852.

An Act to provide for the creation and regulation of Incorporate Companies in the State of Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That any number of natural persons, not less than five, may become a body corporate, with all the rights, privileges and powers conferred by, and subject to all the restrictions of this act. (Laws of Ohio of 1852, p. 274).

SEC. 78. All stockholders of any railroad, turnpike, or plank road, magnetic telegraph or bridge company, shall be deemed and held liable to an amount equal to their stock subscribed, in addition to said stock, for the purpose of securing the creditors of such company.

SEC. 79. All stockholders of any joint stock company, organized under the provisions of this act, except as hereinafter provided, shall be deemed and held individually liable for all the debts due and owing by said company; and the trustees or directors of every society or association, incorporated under the provisions of the sixty-sixth section of this act, shall be deemed and held individually liable for all debts contracted by them for their respective societies or associations. (Laws of 1852, p. 296).

Act of March 11, 1853.

An Act to amend an act entitled "an act to provide for the creation and regulation of incorporated companies in the State of Ohio," passed May 1, 1852. The word "hereinafter" in Section 79 was changed to "hereinbefore." (Laws of 1853, p. 386).

Act of April 17, 1854.

An Act to amend an act entitled "An act to provide for the creation and regulation of incorporated companies in the State of Ohio," passed May 1, 1852, and to repeal the act amendatory thereto, passed March 11, 1853. Section 79 was dropped out and consolidated with Section 78, which was amended to read as follows:

Section 78 All stockholders of any railroad, turnpike, or plank-road, magnetic telegraph or bridge company, or any joint stock company organized under the provisions of this act, shall be deemed and held liable to an amount equal to their stock subscribed in addition to said stock, for the purpose of securing the creditors of such company, and the trustees or directors of every society or association incorporated under the provisions of the sixty-sixth section of this act, shall be deemed and held individually liable for all debts contracted by them for their respective societies or associations (Laws of 1854, p. 44).

Act of May 1, 1854.

An Act to authorize Manufacturing Companies to increase their capital stock in certain cases.

* * * The stockholders of any company heretofore organized or incorporated, which may increase its capital stock agreeably to the provisions of this act, shall be held individually liable for all debts due and owing by said company, except the stockholders of gas companies, who shall be individually liable in a further amount over and above the amount of stock by them severally subscribed, equal in amount to such stock. (Laws of 1854, p. 102.)

Act of April 12, 1865.

An Act Supplementary to 'An act to provide for the creation and regulation of incorporated companies inthe State of Ohio; passed May 1, 1862 [1852].

Sec. 5. The stockholders of any manufacturing, bridge or gas company, increasing its capital stock under this act, or which has heretofore increased the same under the act entitled "an act to authorize manufacturing companies to increase their capital stock in certain cases," passed May 1, 1854, shall be individually liable for all the debts of such company, to an amount over and above the stock by him or her owned in such company, and any unpaid installments thereon to a further sum equal in amount to such stock, and shall, moreover, be individually liable for all debts due to the employees of such company. (Laws of 1865, p. 134.)

Act of March 11, 1872.

An Act to amend sections one, two and five of an act supplementary to an act to provide for the creation and regulation of incorporated companies in the State of Ohio, passed May 1, 1862 [1852].

Section 5. The stockholders of any manufacturing, bridge, hydraulic or gas company, or masonic or odd fellows' association, increasing its stock under this act, or which has heretofore increased the same under the act entitled "An act to authorize manufacturing companies to increase their capital stock in certain cases," passed May 1, 1854, shall be individually liable for all the debts of such company or association to an amount over and above the stock by him or her owned in such company, and any unpaid installments thereon to a further sum equal in amount to such stock, and shall moreover be individually liable for all debts due to the employes of such company or association." (Laws of 1872, p. 24.)

Revised Statutes of 1880.

Sec. 3258. The stockholders of a corporation which may be hereafter formed, and such stockholders as are now liable under former statutes, shall be deemed and held liable, in addition to their stock, in an amount equal to the stock by them subscribed, or otherwise acquired, to the creditors of the corporation, to secure the payment of the debts and liabilities of the corporation. (1 Rev. Stats., 1880, p. 843).

State Constitutions.

Group I.

NEW YORK—CONSTITUTION OF 1846.

Article VIII.

Sec. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law. (2 Poore's Constitutions, 1363.)

ILLINOIS—CONSTITUTION OF 1848.

Article X.

Sec. 2. Dues from corporations, not possessing banking powers or privileges, shall be secured by such individual liabilities of the corporators, or other means as may be prescribed by law. (1 Poore, 465.)

INDIANA—CONSTITUTION OF 1851.

Article XI.

Sec. 14. Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law. (1 Poore, 524).

NORTH CAROLINA—CONSTITUTION OF 1868.

ARTICLE VIII.

SEC. 2. Dues from corporations shall be secured by such individual liabilities of the corporations and other means as may be prescribed by law. (2 Poore, 1431, 1447.)

SOUTH CAROLINA—CONSTITUTION OF 1868.

ARTICLE XII.

SEC. 4. Dues from corporations shall be secured by such individual liability of the stockholders, and other means, as may be prescribed by law.

SEC. 5. All general laws and special acts passed pursuant to this section shall make provisions therein for fixing the personal liability of stockholders under proper limitations; * * * (2 Poore, 1662.)

Group II.

CALIFORNIA—CONSTITUTION OF 1849.

ARTICLE IV.

SEC. 32. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 36. Each stockholder of a corporation or joint-stock association shall be individually and personally liable for his proportion of all its debts and liabilities. (1 Poore, 199.)

MISSOURI—CONSTITUTION OF 1865.

ARTICLE VIII.

SEC. 6. Dues from private corporations shall be secured by such means as may be prescribed by law; but in all cases each stockholder shall be individu-

ally liable, over and above the stock by him or her owned, and any amount unpaid thereon, in a further sum at least equal in amount to such stock. (2 Poore, 1152.)

ALABAMA—CONSTITUTION OF 1867-8.

ARTICLE XIII.

SEC. 2. Dues from corporations shall be secured by such individual liabilities of the corporators or other means as may be prescribed by law.

SEC. 3. Each stockholder in any corporation shall be liable to the amount of stock held or owned by him. (1 Poore, 74.)

KANSAS—CONSTITUTION OF 1858.

ARTICLE XIV.

SEC. 2. Dues from corporations shall be secured by such individual liability of the stockholders and other means as shall be prescribed by law, and each stockholder of a corporation or joint-stock association, except corporations for charitable purposes and railroad corporations, shall be individually liable over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum at least equal in amount to such stock. (1 Poore, 625).

Group III.

NEVADA—CONSTITUTION OF 1864.

ARTICLE VIII.

SEC. 3. Dues from corporations shall be secured by such means as may be prescribed by law: *Provided*, That corporators in corporations formed under the laws of this State shall not be individually liable for the debts or liabilities of such corporation. (2 Poore, 1258.)

WEST VIRGINIA—CONSTITUTION OF 1872.

ARTICLE XI.

SEC. 2. The stockholders of all corporations and joint-stock companies, except banks and banking institutions, created by laws of this State, shall be liable for the indebtedness of such corporation to the amount of their stock subscribed and unpaid, and no more. (2 Poore, 2012.)

MISSOURI—CONSTITUTION OF 1875.

ARTICLE XII.

SEC. 9. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him or her. (2 Poore, 1192.)

ALABAMA—CONSTITUTION OF 1875.

ARTICLE XIII.

SEC. 8. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her. (1 Poore, 95.)

IDAHO—CONSTITUTION OF 1890.

ARTICLE XI.

SEC. 17. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him. (Const. of Idaho, Off. Ed. 1891, p. 36).

Group IV.

MICHIGAN—CONSTITUTION OF 1850.

ARTICLE XV.

SEC. 7. The stockholders of all corporations and joint-stock associations shall be individually liable for all labor performed for such corporation or association. (1 Poore, 1009).

MINNESOTA—CONSTITUTION OF 1857.

ARTICLE X.

SEC. 3. Each stockholder in any corporation shall be liable to the amount of the stock held or owned by him. (2 Poore, 1039).

KANSAS - CONSTITUTION OF 1859.

ARTICLE XII.

SEC. 2. Dues from corporations shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by each stockholder, and such other means as shall be provided by law; but such individual liabilities shall not apply to railroad corporations, nor corporations for religious or charitable purposes. (1 Poore, 640).

NEBRASKA—CONSTITUTION OF 1875.

ARTICLE XI.—MISCELLANEOUS CORPORATIONS.

SEC. 4. In all cases of claims against corporations and joint-stock associations the exact amount justly due shall be first ascertained, and after the corporate property shall have been exhausted, the original subscribers thereof shall be individually liable to the extent of their unpaid subscription, and the liability for the unpaid subscription shall follow the stock. (2 Poore, 1231).

CALIFORNIA—CONSTITUTION OF 1879.

ARTICLE XII.

SEC. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation, or joint-stock association, during the term of office of such director or trustee. (Statutes of California of 1903, p. lxi).